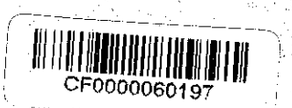
XII-189 (Jail) C J.P.R./9-94

जेल 1392/98



APPEAL OF PRISONER

D3(m)

No दण्डित बंदी क्र०:- 975/57 Name मंगलू

Father's name बैजनाथ, मुकाम-हथबहर, थाना-बैकुण्ठपुर(पटना), जिला-सरगुजा (म०प्र०)

Residence धारा 302 भा०द०वि० Age 36 वर्ष

Sentenced to आजीवन कारावास कठोर on 28.05.1998

Under Section _____ by मान०न्याया० अपर सत्र न्याया० श्री एस० आर० एन० पटेल महोदय, बैकुण्ठपुर, जिला-सरगुजा (म०प्र०)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received _____

3 Date on which Appeal sent 11-06-1998

4 Whether the prisoner wishes to be represented or not हाँ

No दण्डित बंदी क्र०:- 975/57 Name मंगलू पि० बैजनाथ

Confined in _____ Jail _____

No _____ Dated 11.06.1998

Forwarded to the रजिस्ट्रार महोदय, माननीय उच्च न्यायालय, जबलपुर (म०प्र०)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

अधीक्षक
जिला कारागार
बैकुण्ठपुर (सरगुजा)

SUPERINTENDENT
DIST. JAIL BILASPUR
Superintendent
Jail

11/6

Date of receipt in _____ Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the

Date of receipt in Appellate court _____

(P. T. O.)

XI-HC-22

(39)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. 1398/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1398 of 1998

Appellant : Manglu

Vs.

Respondent : State of Madhya Pradesh

Shri R.K.Jain with Smt. Kiran Jain, learned counsel for the appellant.

Shri U.N.S.Deo, learned G.A. with Shri M.P.S. Bhatia, learned P.L. for the State/respondent.

ORAL JUDGMENT
(04.04.2006)

Per L.C.Bhadoo, J

By this appeal under Section 374(2) of the Criminal Procedure Code the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 28.05.1998 passed by learned Additional Sessions Judge, Baikuntpur, Sarguja in S.T. No. 177/97 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of Bharat Singh convicted him under Section 302 of the IPC and sentenced him to undergo imprisonment for life.

2. Case of the prosecution, in brief, is that deceased Bharat Singh was residing with his wife, mother and children in village – Hathbar, Bhandarpara. On 04.04.1997 wife of the deceased namely Shyam Bai

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.1398/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

lodged a report in the Police Station – Patna to the effect that on 03.04.1997 her husband went for fishing and she after preparing the meal, went to the forest for collecting wood and saw that her husband was fishing in Hathbar pond. When she was returning at about 1.00 in the noon, at that time she also saw her husband fishing and thereafter she left for the house of her elder brother Bhanwar Singh. When she returned to her house in the evening her daughter Babi informed her that her father (deceased Bharat Singh) came at about 3.00 O'clock and after taking meal has again left for fishing and he also took away the axe but he did not return in the night. On the next day morning mother of the deceased went to collect *Mahua* and returned weeping and on enquiry she did not inform anything. Thereupon, wife of the deceased Shyam Bai went near the pond and saw that dead body of her husband Bharat was lying in the field of Manilal. There were injuries on the neck, leg and other parts of the body and blood had oozed out of the injuries. Receiving this report Station House Officer, P.S. - Patna registered the First Information Report Ex.P-1 and left for the scene of occurrence. After giving notice Ex.P-2 to the Panchas, he prepared the Panchanama Ex.P-3 of the dead body of deceased Bharat Singh. During police custody the accused gave memorandum Ex.P-6 and in pursuance of that he got recovered the bloodstained wooden handle of the axe, one bloodstained pant and one bloodstained sky blue colour shirt from his house and the bloodstained axe. The same were taken into possession under Ex.P-7. The injuries on the person of accused were examined by Dr A.K.Sharma (PW-11) who after examination of the injuries prepared the injury report Ex.P-13. The body of Bharat Singh was sent for postmortem examination to Community Health Centre, Baikuntpur under Ex.P-14 where Dr. R.N. Rajouriya (PW-

[पीछे देखिये

(40)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A/1398/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

16) conducted the postmortem on the body of deceased Bharat Singh and prepared the postmortem report Ex.P-15. The recovered axe and wooden handle of the axe were sent for seeking opinion of the doctor under Ex.P-16 and the doctor gave his opinion under Ex.P-16-A. The bloodstained and plain soil was taken into possession under Ex.P-17. The site plan Ex.P-19 was prepared. The recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar from where report Ex.P-21 was received. Report P-22 was received from the Serologists. After completion of the investigation charge sheet was filed against the accused in the Court of Judicial Magistrate First Class, Baikuntpur who in turn committed the case the Sessions Judge, Sarguja from where learned Additional Sessions Judge received the case on transfer for trial.

3. Prosecution in order to establish the charge against the accused/appellant examined 18 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned in paragraph – 1 of this judgment.

4. We have heard Shri R.K.Jain with Smt. Kiran Jain, learned counsel appearing for the accused/appellant and Shri U.N.S.Deo, learned G.A. with Shri M.P.S.Bhatia, learned P.L. for the State.

5. Homicidal death of deceased Bharat Singh is not in dispute.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A/1398/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

6. As far as involvement of the accused/appellant in committing the crime in question is concerned, there is no direct or ocular evidence in this case. The whole case of the prosecution rests on circumstantial evidence and the prosecution has tried to establish the charge against the accused/appellant on the following circumstances;

(i) that the axe and the wooden handle of the axe were recovered at the instance of the accused;

(ii) that on the date of incident deceased was seen by PW-10 Balkaran, going on the road which goes to the house of accused;

(iii) that on the date of incident PW-5 Subaso Bai, wife of the accused went to the house of PW-7 Shanit Bai and informed her that her husband Manglu has snatched the axe from Bharat and he was saying that he would attack him;

(iv) that the injuries were found on the person of accused.

7. As per the settled law, in order to rest the conviction based on the circumstantial evidence the prosecution is required to establish that such evidence satisfy the following tests:-

1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1392/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4) the circumstantial evidence in order to sustain the conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

8. Having heard learned counsel for the parties, we have scrutinized the evidence available on record.

9. So far as the first circumstance relied upon by the prosecution is concerned, PW-3 Shivnath Singh has stated that on enquiry by the police the accused gave information Ex.P-6 which bears his signature from 'A' to 'A' and in which the accused has stated that he had concealed the wooden handle of the axe in his house and the axe had been hidden in the house of his sister and he could get the same recovered. In pursuance of the said information the above articles were taken into possession under Ex.P-7. The Investigating Officer Navneet Patil (PW-18) has stated that on 07.04.1997 the accused was taken into police

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.1398/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

custody and on interrogation he gave information that he has concealed the wooden handle of the axe in his house, the iron part of the axe was thrown near the Hathbar pond and the clothes he was wearing at the time of incident, have been left for drying after washing the same. In pursuance of the said information wooden handle of the axe which was stained with blood and on which hair of the head were also stuck, one bloodstained sky blue colour shirt and the axe was taken into possession under Ex.P-7. Therefore, in view of the above evidence of PW-3 Shivnath Singh and PW-18 Navneet Patil, the Investigating Officer, recovery of the wooden handle of axe as well as clothes of the accused stands established. As per the report of the F.S.L., Sagar, bloodstains were found on the wooden handle of the axe (F), axe (I) and full-pant (G). However, as per the report of the Serologists blood on the axe, full-pant and handle of the axe was disintegrated, therefore origin could not be determined. Moreover, the axe in question was put for identification before PW-1 Shyam Bai, wife of the deceased who has categorically stated that the said axe does not belong to them. Therefore, the accused cannot be connected with the crime in question on the basis of recovery of the axe as the recovery itself becomes doubtful because the axe has not been identified by wife of the deceased and the police has tried to create evidence but there is no evidence to show that blood found on these articles was of the blood group of the deceased and these articles are common articles which are available in every house. Therefore, based on this circumstance the prosecution has not been able to establish the crime against the accused/appellant.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1398/98 सन् ~~200~~

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10. As far as the second circumstance is concerned, PW-10 Balkaran has stated that on the date of incident he went to the house of Krishna Bihari who asked him to go for fishing. However, he refused to accompany Krishna Bihari and after some time he was going towards the pond to attend the call of nature along with Jheemal. At that time Bharat enquired from Jheemal about the buffalos, on which Jheemal replied that he has not seen his buffalos and at that time Bharat was carrying bamboo and axe. It was the evening time. Thereafter, Bharat went on the way which goes towards the house of Manglu and next day he came to know about the death of Bharat. However, in paragraph – 4 of the cross-examination he has stated that he saw that Bharat was coming carrying bamboo but he could not say as to which side Bharat had gone thereafter. Thus, the fact that the deceased was seen going on the road which goes to the house of accused, does not connect the accused with the crime in question because in the first instance this witness had not seen Bharat going to the house of accused. Moreover, even thereafter he saw the deceased on the pond, therefore, from the above circumstance it cannot be held that this witness saw the deceased going to the house of accused. In view of the above, on the basis of this circumstance the accused cannot be held guilty of causing death of Bharat Singh.

11. As far as the third circumstance is concerned, PW-7 Shanti Bai has stated that on the date of incident in the evening Subaso Bai came to her house and stated that Manglu has snatched the axe from Bharat and he was preparing to attack Bharat and thereafter Subaso left her house. On the next day she came to know that Bharat has been murdered. However, merely on the evidence of this witness the accused cannot be

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1398/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 8	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

connected with the murder of deceased for the reasons that in the first instance Subaso Bai who has been examined as PW-5, has not supported the prosecution case and she has categorically denied that she went to the house of Shanti Bai and informed that Manglu has snatched the axe from Bharat and he was preparing to attack him. There is no evidence to the extent that anybody saw the deceased in the house of the accused and moreover, based on the recovery of the axe and wooden handle of the axe the prosecution has not been able to connect the accused with the crime in question. The evidence of PW-7 Shanti Bai does not find corroboration from other evidence. Therefore, merely on the ground of this weak evidence the accused cannot be connected with the crime in question.

12. So far as the fourth circumstance is concerned, as per the evidence of Dr. A.K.Sharma (PW-11) he examined the body of accused Manglu on 05.04.1997 and found that there was one bruise and abrasion on left hand, one abrasion on the right knee and there were two bruises on the back of the accused. He also noticed that there was an abrasion on the knee of the left leg and the injuries were two days' old. He has opined that these injuries could be sustained by falling from tree. Therefore, in the absence of any other evidence corroborating the above evidence to the extent that the accused might have sustained the said injuries at the time of struggle with the deceased, merely on the basis of injuries present on the person accused he cannot be connected with the crime in question.

13. In view of the foregoing reasons, we are of the considered opinion that the prosecution has not been able to establish the involvement of the

[पीछे देखिये

(46)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1398/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 9	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused in the crime in question on the basis of circumstantial evidence pressed into service by it and the same are not conclusive in nature. Moreover, the circumstances relied upon by the prosecution have not stood to the test laid down by the Hon'ble Apex Court in the matters where conviction rests upon the circumstantial evidence, therefore, the finding of the trial Court convicting the accused for commission of offence under Section 302 of the IPC cannot be sustained.

14. In the result, the appeal succeeds and the same is allowed. Conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside. The accused/appellant is acquitted of the charge under Section 302 of the IPC and he is directed to be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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